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ABSTRACT

OF THE

Sea-Laws,

As Established in Most

KINGDOMS

OF

EUROPE,

But more particularly in

England and Scotland.

L O N D O N,

Printed for *Isaac Cleave* next *Serjeants
Inn* in *Chancery-Lane.* MDCCIV.

ADMIRAL
CHURCHILL

Author
The Duke of Devonshire
proves the necessity of



to the public of the navy
Authority of his protection
during a Worth in his
manoeuvres in the pursuit of his
interest as well as the
inclination to make good
the Admiralty

TO
ADMIRAL
CHURCHILL.

Most Worthy Sir,

THe Lustre an Author receives from the Virtues of his Patron, proves the necessity of an Epistle of this nature. The Authority of his Protection, insinuating a Worth in his performance. In the pursuit of this Interest, as well as the gratifying my Inclinations, to make good the

®

The Epistle Dedicatory.

particular esteem a person of some
Note in my Family, whilst living,
entertained for you, I humbly
beg leave to lay this small Treatise
at your Feet. And though the
Eminence of your Virtues, and the
many Proofs you have given of
them to the World, prevent the de-
sign of these Lines (the one setting
you above any Encomium, the o-
ther giving no room for the Office
of an Herald to proclaim them)
Yet thus far I may presume to as-
sure you, that I cou'd not make
choice of a Patron more worthy
such a subject, nor a subject more
becoming the Dignity of its Pa-
tron. A subject no less than those
Laws, the maintenance whereof is
the only Prop of our present Hap-
piness at home, and our Grandeur
abroad; A Patron who moves in
one of the highest Spheres in their
Con-

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The Epistle Dedicatory.

Constitution, and whose Merits are
as eminent as his Office.

Give me leave, Sir, from the
gradual Encrease of your power,
to insinuate the Greatness of your
Mind, which seem'd to scorn a
precarious advancement, which
you well knew you might one day
lay claim to. As your perfect
Knowledge to obey was a certain
Omen of your present Commands,
so these are as evident Proofs of
your former Obedience. In each
Station you have exerted a Genius
peculiar to, and worthy of your
self.

These considerations, Sir, indu-
ced me to believe this small Per-
formance of right belong'd to you.
I cou'd not but esteem your im-
mediate Care of the Sea-affairs,
joyned with the Dignity of your
Office, and your personal Merit, an

The Epistle Dedicatory.

undoubted Claim to the Patronage
of the Sea-Laws.

Though I cannot offer any
thing in the behalf of this Treatise,
yet the difficulty of the work gives
me hopes of your Candour in the
Censure of it. And the less I have
performed, the greater necessity I
lye under of your Protection, to

S I R,

Your Most Obedient

Humble Servant,

T. Neale.

THE
PREFACE.

SUCH is the advantage and use of Shipping, that if we reflect upon Antiquity, and trace the Ancients down to our times, we shall find the grandeur of their Princes depended on it; their Kingdoms flourished or declined in proportion to the encouragement or neglect of their Sea affairs. This it was that so often changed the Seat of Empire, and translated it from State to State, according to the success of their happy applications to it.

The Rhodians first gave birth to a Seafaring Government, and by it grew to such an eminent pitch of Grandeur, as to Lord it over all other powers. Nor was their Wealth inferiour to their Authority: All Nations admired and feared the Industry of that people, and Neighbouring Princes paid

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Tribute to their power, and modell'd their Government on the Sea to the Equity of their Laws.

Thus Tiberius Cæsar, Hadrian, Vespasian and Trajan successively referr'd their Sea-faring debates to the judgment and decision of the Rhodian Law. So their Successor Antoninus, in answer to a complaint made to him, confessed that tho he was Lord of the World, yet the Law was Master of the Sea, and referred the matter to the Determination of the Rhodians. Thus even Rome, the Mistress of the World, submitted to these people, and acknowledged the benefit and equity of their Laws: Which, to the Immortal Honour of their Legislators, govern'd the Sea at least a thousand years. Tho the Romans took care to improve, or rather interpret them, the better to provide against the fraud that crept in, to the oppression of their Sea-farers.

But upon the Subversion of the Roman Empire, these, as well as all other Laws, became extinct; and the Romans after were obliged to establish new: and this was indifferently permitted to every chief Sea-faring Town on the Mediterranean, as they of Marseilles did, An. Dom. 1162, and so the Genoese

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their 1186, Peloponnesus in 1200, the Venetians 1215, and others : Which Laws continue valid in the Mediterranean to this day.

The Great Ocean, which is our Sea, first received its Laws from the Island of Oleron, situate on the Coast on France ; where all Debates in the Sea affairs were decided, and these Laws were afterwards made use by the Dutch. So the Kings of Scotland and England made several Decrees concerning the Sea affairs *. But tho there are several Acts of most Princes of Europe touching the Sea, yet the fragments of the Rhodian Law are translated by Shardius, and intitled *Leges Navales Rhodiorum*, & *Leges Selectæ Rhodiorum*, by the common consent of Nations, are still valid throughout all Europe.

* Vide Act. Parl. Scot.
† Vide Statut. Angl.

And since the Laws of the Sea are the matter in hand, it will not be unnecessary, in the pursuit of the following Treatise, to obviate the Objections against them ; as if an uninterrupted Liberty were to be permitted to all Nations indifferently on all parts of the Sea, to fish where and when they please ; and all to enjoy that in common which is the undoubted property of some. And to support this

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this Objection, are produced the Opinions of Poets, Orators and Philosophers ; that the Land and Sea by the first condition of Nature hath been, and should be common to all, and not appropriated. Against this the Scripture will furnish us with authority sufficient. For God having made and disposed the four Elements for mans use, bids him subdue the Earth, and rule over the Fish. Which plainly implies his Dominion and Empire over the Sea as well as the Earth. So after the Flood it is said, Replenish the Earth. And the better to do it, God, out of his Justice against the attempt made upon him at the building of Babylon, and to prevent the like presumption for the future, divided it. For Moses says, These are the Isles and the Nations divided in their Lands.*

Genes. I. 28.

Gen. C. 10. V. 5.

From hence it is evident, that things are not so naturally common, seeing God, the Author of Nature, is as well the Author of the Division as of the Composition. And indeed this not a little demonstrates the Indulgence of Heaven for the Care of Mankind. For it is as true a Maxim as common,† That the Community breeds Contention and Quarrelling. That what is possessed in Common, by a depravity of Nature, is neglected and despised.

† Ulp. de Rebus eorum qui sub Tutela.

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the large increase of Man in process of
replenishing the Earth, and consequently
using it, the Goods of every Region be-
ing not sufficient for their Necessities and
wishes, gave birth to Traffick by Sea, not
only for the ruling the Fish, as God com-
manded at the beginning, but also to transport
Necessaries for their use; and therefore the
Sea too became divisible, and required a
Partition with the Earth. Videmus,
Baldus de Jure Gentium, in Mari Reg-
nare distincta sicut in terrâ aridâ. Thus,
Scripture is proof far above the opinions
of Philosophers and Orators, &c.
But to answer the Opinions of some: It
is objected, that no man is hindered or for-
bidden to come to the Sea side to fish. That this
implies a Community of the Sea to all without
exception. That the Emperor Dives Pius in
his Letter approved such a Community for the
Fishers of Formian. But then it is to be con-
sidered, that these Fishers were not Aliens and
Strangers, but his own Subjects; which is al-
ways true to all people within their own Nation;
and who by the Roman Laws concerning the
Community of the Sea-shore and Coast, it is
permitted to private men to build Houses
within the Flood mark, and appropriate
them

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them to themselves, according to that Neratius, Quod in Littore quis Ædificatus ejus fit; yet it is conditionally so, provided the Prince give authority for it.

Now what creates such parties for Mare liberum is the misinterpreting word commune, which the Partizans it expound as free and uninterrupted to Nations; When indeed the Construction is limited, and implies no more than publicum or populicum, a thing publick common to any one sort of people of a Nation, and not for all of all Nations. Nor does Jus Gentium mean the Law drawn by the common consent of Nations but only notes the Example of the Law or Custom of other Nations. So that the fishing on the Seas or ashore was common to every one of the Roman Empire, as the same was common to all of other Nations on the Seas or Coasts.

Nor is the Objection of Placentius of greater force, when he says, That God is the only Lord of the Sea. For he is not less the Sole Governour and Lord of the Land, and so that wou'd destroy a propriety of the Land which all grant. A certain Author says, that no Nation nor any

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one person can possibly obtain a Property
that of the Sea; neither Nature nor the common
necessity suffering it to be acquired in pro-
perty to an occupation.

To enquire then into the supposed impossi-
bility, that the Sea should be occupable or ac-
quirable. We cannot, says one, appropriate
the Sea, it not being solid like the Land for
men to trade on, and also continually ebbing
and flowing. As to the first, it cannot hin-
der the possession of it, if we will allow the
same that which all grant the Land. For
it is not required from a Man that would
possess himself of any Tract of Land, to tra-
verse over every particular part of it, but is
sufficient if he enter on any part, with in-
tention to possess himself of the rest: So it is
not necessary for the Sea. And tho the Sea
is liquid, fluid and unstable in its particular
parts, yet in the whole body it is not so; be-
cause it keeps the prescribed bounds strictly
enough as to its chief places and limits.

Another Objection is, That there can be
no Marks or Limits as at Land to di-
vide the Seas by, and therefore no proprie-
ty. For, says an Author by way of Ri-
mule, Mandum dividunt non ullis limi-
bus aut Naturâ aut manu positis, sed
per imaginariâ quadam Linea, quod si recipi-
tur,

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tur, & Geometriæ terras & Astronomiæ
Cœlum nobis eripient. *The World is di-*
vided not by marks, put either by Nature
the Hand of Man, but an Imaginary Line
which if we admit of, the Geometers, say
may steal the Earth from us, and the Astro-
nomers the Heaven. It is to be confessed
there are not in all parts of the Seas, Islands,
or Sands, nor Rocks, or other equal and
visible Marks above the Water, to preserve
or lay out the limits and bounds of any
divisible part of it. But God, who is the
Distributor, and first Author of the Division
and Distinction of both Sea and Land, hath
given an understanding Heart to Man for
the same effect, as well as for all other ne-
cessary actions wherein he hath to imple-
ment himself. So that to a miracle, God has in-
structed them by the help of the Compass, and
counting of the Courses, sounding, and other
ways to find out, as far as as is expedient
for the certain reach and bounds of the Seas
properly pertaining to any Prince or People.
Which bounds Bartolus extends and allows
for Princes or People at the Sea side a
hundred Miles distant from their Coasts
and justly, if they exercise a protection
and conservacy so far, and this is called

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the Civilians, *Districus Maris and territorium.*

Since then, as Papinian observes, in *filibus Questionibus vetera monumenta sequenda.* What more evident Monument can we of this Nation have for our Right in the Narrow Seas, than the Isles of Guernsey; and for the Eastern Seas direct from Scotland, nothing is more notorious than the Covenant between the Scots and the Dutch, concerning the length of their approach towards Scotland by way of fishing. Thus far concerning the impossibility of a tenure or Occupation on the Seas from its solidity. It remains to take notice of the water objected from its continual Flux, which makes it appear not one and the same body, but daily changeable.

Now tho the Sea changes many ways, and often by its ordinary dashing against the shore, by its mixture with other Waters, swelling in its self, &c. Yet since the great body of the Sea most constantly keeps the appointed place limited by God, the Nature of the Sea may be acquirable.

Martian affirms that if a private man has caught and exercised fishing in any Creek or brook of the Sea for some time, it is sufficient
for

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for a prescription to forbid all others to fish in it. It is then to be demanded why a private man, that has no care nor respect but to himself, be privileged above, and preferred to a Prince, who for the Publick safety of his People in common, and all Traders passing his Coasts, is at great charge and trouble to preserve the nearest to him. Such a publick Good certainly merits the Tribute of that which is preserved by it. Thus far concerning a Mare liberum.

Which, if permitted, would give birth to the greatest inconveniencies.

Thus having evinced the propriety of the Sea, we have laid a foundation for the following Treatise.

THE

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O F A L L T H E
S e a L a w s , & c .

C H A P . I .

AS the Sea-Affairs more immediately concern Seafaring Men, and such as intermiddle and correspond with them, so the Doubts, Differences and Controversies arising from them, touch only such; which are Owners, Out-traders, or Hivers, Masters, Pilots, Mariners, Clerks, Merchants, Passengers. The Owner is the Person obtaining a Property of the Ship, or any part of it. The Out-
B trader

trader or Hirer is he, who (by Virtue of his Purchase, or Partnership for a Voyage or more, during the hiring and lease of the Vessel,) is entitled to the Profits and Commodities arising from it. The Master is he, to whom the whole care of the Ship and her Cargo is intrusted. The rest are all known. Now it often happens that these three distinct persons are involved in one; and he that is Master, is Out-trader, and Owner. Tho more commonly they are distinct, and consequently their Offices are so. The Cognition of their debates falls not under any Judge indifferently, but only the Sea-Admiral. And seeing the Knowledge of their respective Duties is of great benefit to Sea-faring persons who are frequently abused because ignorant of their Priviledges, I shall treat

First, Of the Office of the Judge
The Members of that Court, and
Their manner of Proceedings.

Secondly, Of Persons ordinary in Ships, with the freight thereof, as belonging to the chief Use of Shipping.

Thirdly, Of the Power, Duty, and Priviledge of these in Ships.

Fourthly, Of the Causes of Losses and Damage in Sea affairs, with the Redress thereof.

Fifthly, Of Priviledged Ships, Shipwrecks, Ships, and Things taken and found on the Sea, or within the Floud Mark.

Sixthly, Of Fishing, Fishers, Ferryers, Watermen, and Shipwrights.

C H A P. II.

THe *Romans* in the beginning of their Empire digested their Sea affairs into three Offices. The first, That of the Charge of their Shipping: The Officers whereof were called *Duumviri Navales*. The second, That of the Command of their Fleets and Na-

vies. And their Admirals were named *Archigubernii*. The third, That of the Jurisdiction in Sea-faring debates. The Justiciaries of which were called *σεκτνυοι*. And after the Seat of the Empire was removed to *Constantinople*, the Commander in chief was *Magnus Dux Classis* and *Drungarius Magnus*, as the chief carrier of the *Pinsel* or Flag. In process of time he was stiled *Admiratus*, from *Amiras*, a *Saracen* word, signifying an Overseer or Captain by Sea or Land. Whence comes the *Italian* word *Amirante*, as well as *L'amiraglio* for the Leader of their Fleets. Whence also seems derived the word *Admiral*, which is commonly received in most parts of *Europe* for the chief Commander of a Fleet.

The Admiral then is properly he that presides over, and governs all Sea affairs. Who with the *Romans* was *Præfectus Maris*; with the *Græcians* *Thalassimcha*, or Governour of the Sea. To whom they appealed in all Sea-faring debates.

Thus far concerning the Names for Commanders of the Seas; and if we search

Search into the Register of Time, we find the Jurisdiction of these Governours at first permitted to every President indifferently on the Sea Coast. But afterwards they constituted Special Judges. Tho every of these were accountable to the Grand Judge or High Admiral, whom they stiled *Præfectus Prætorio Sublimissimus*, from whom there was no Appeal. And the better to secure this Authority to the Admirals, in the due obedience of Sea-men to their Jurisdiction, it has been thought convenient by all Nations, and unanimously agreed on, that, considering the Admirals obtain so special a power and prerogative over the lives of Men on the Sea, they should govern by Laws peculiar, and have a Jurisdiction proper to themselves over all Seafaring men within their bounds, in all Causes and Debates, as well Civil as Criminal. So that no other Judge presume to intermeddle therewith, unless by Commission from the Grand Admiral, or in some difficult causes.

Now seeing the Admiral himself is commonly resident at Land, or if at Sea, not possible to be every where, and

consequently is not capable of an immediate Exercise of this Authority (which is necessary) on the Sea : It has been judged convenient, for the entire preservation of his Jurisdiction, to constitute a Vice Admiral, with Captains, to supply his absence ; and considering the Dignity and Difficulty of his Office, as well for the Aggrandizement of the one, as the Ease of the other, He constitutes his Deputies for particular parts on the Sea-coasts, with Coroners to view the dead bodies found on Sea or on the Coasts, and Commissioners or Judges General to preside in his high Court by Land, with Clerks, Procurers, Doomfayers, Marshals and other Officers, to execute his Authority both in Peace and War ; to sit and hold Courts when and where they please, to hear Causes, to execute Justice, to Imprison or Release, as the matter before them shall appear, and to command the Queen's Prisons to keep their Prisoners in.

In *Scotland*, before the constituting of our Admiral, the Deans of *Glasgow* were the ordinary Judges in Civil De-
bates

bates between Mariner and Merchant, as the Water Bayliff between Mariner and Mariner. In Cases Criminal they appealed to the High Justice ; which now are peculiar only to the High Admiral. And therefore his Judge or Commislar, called Judge Admiral, and none other, is to sit to hear and determine in Seafaring Causes, to receive and examine upon Complaints, Contracts, Offences, Pleas, Exchanges, Assurances, Debts, Counts, Charter Parties, Covenants, and all other Writings concerning lading or unlading of Ships, Fraught, Hire, Money lent upon Casualties and Hazard at Sea, and all other business whatsoever amongst Sea-farers done on the Sea, either on this side or beyond Sea, together with the Cognition of Writs and Appeals from other Judges. To take Stipulations and Insinuations in the Books of the Admiralty, and to do all other Offices that fall under the cognizance of that Court. And therefore to Arrest and put in Execution to enquire within and without Liberty, by the Oaths of 12 Persons upon all Offences.

C H A P. III.

THe Clerk of the Court of Admiralty, as his Office differs very very much from that of the Clerks of other Courts, so besides the Vigilance and Industry requisite in such, should have also several Registers ; as well for Congees, Safe conducts, Passports, Sea Briefs, without which no Ship should sail in the Sea in time of War, nor go long Voyages in time of Peace, which no other Judge has power to grant, but the Admiral only ; and for the reports of the Skippers and Captains at their return to the Admiral, as for the Names of Merchants, and Passengers, and Owners, the Skipper being obliged to give up the said persons by Name, as no man can take upon him the Office of Master or Pilot without a tryal of his ability and experience ; so such tryal ought to be registred in the Books of the Admiralty ; which Registring within

Secund.
Act Par-
liam. Jac.
5. Cap. 27.

within the *Thames* only belongs to the *Trinity-house*. So likewise all Money lent upon hazard at Sea, by the *Romans* See the Charter of the Trinity House in Thames. called *Pecunia Trajectitia*, for a certain Interest stiled *Fœnus Nauticum*; for which the Lender run the risque; and all Bills of Assurance should be done before the Clerk of the Admiralty. Nor may any other Clerk presume to intermeddle with Sea affairs, unless with special Licence of the Admiral.

C H A P. IV.

FOR the speedier dispatch of Causes in the Admirals Court, and for the better providing against Injuries and Injustice, It has been judged necessary to oblige by Oath, the Procurers, before they be heard, to do nothing maliciously and vexatiously; but as soon as they perceive their Action unjust in any part of the process, they shall discover it to their Clients; and if they insist on it, then to the Judge. That they

they shall not collude with the Adversary to betray their Client, nor discover his Secrets. Nor is this Oath of Fidelity administred to these only, but to all other the Officers of the Court, for the better and juster execution of their respective Duties; and this at their admissions.

C H A P. V.

THe Controversies and Debates of Sea-farers, and their Actions are to be decided according to the received Laws and Statutes of the Sea; but upon failure of these, Custom is as prevalent, it being the usual Interpreter of all Dispositions and Ordinances. And in case of defect of both these, then the last appeal is to some judicious upright person in the Profession. No opinion being more to be relyed on than that of an honest and expert person in his own calling. But in the manner of Proceeding, It is a perpetual Priviledge

quod

quod velo levato ; and that is, that Causes should be heard and determined briefly, without the tedious formality and solemnity of other ordinary Courts, as only looking to God and the Truth. And this more especially in cases of Shipwrack ; as it would be a Cruelty to vex such unfortunate wretches with the long ordinary proceedings of Courts, and therefore they need not put in their Petitions in writing.

L. de Sub-
mersis. C.
de Nauf.
Lib. 11.

As Navigation tends to the aggrandizement of a State, so whatever shall obstruct that, must be prejudicial to it. A summary process therefore should be common to all Sea-farers, lest by the loss of their Right, or their Trade, by long vexatious Suits, they be rendred incapable of serving the Publick, and an incumbrance to that Government, to which otherwise they wou'd have been the glorious Instruments of advancement. Which sort of process is so urged by the Doctors of Law, that they advise Judges, who fear Appellations or Advocations, to prevent the same, by an immediate Execution, in Causes of Spoyl or Wreck : So that upon

Bartol.
Lucius &
Johannes
de Sub-
mersis

every

every Interlocutor they may proceed to Execution, making Restitution presently. Provided always that Caution be first found by the Spoyled to satisfy the Sentence of the Judge of the Appellation, in case it shall happen to be made.

This is also a particular Priviledge of the Sea-faring Judicature, that altho by the common rules of the Law, where no Litiscontestation is past, no Witness shall be received *nisi ad eternam Rei memoriam, & adversario ad id citato*. Yet in Shipwrack, as a case very pitiful and extraordinary, any of the wretched Crew may apply himself to the Judge of that part where the Wreck happens, and prove by Witness brought with him, of the Wreck and Spoil; in order to prevent or repel the prosecution of any Owner of the Goods of such Ship wrecked, by an exception of an Innocent Loss. Which shou'd be done within a year and a day, and that by such as were in service to the Prince and Country. So in Causes of Spoyl, where, by the Laws of *England*, it is sufficient for the Spoyler to prove his Goods by his Mark, &c.

In

In which doing no Citation is required, and that against the Common Law. Nay, the Death of the Ship-broken Crew may not only be proved by the rest living, but also by the persons, who were present at the preparation of their Voyage; even their own Parents and Children, if none of the Crew be alive.

As this is a Priviledge extraordinary for such Chances, so Merchants and Mariners sayling together may testifie of each other of their Society within Ship, provided they are not byassed by Interest, or fear of Loss. This is allowed to Mariners for or against the Skipper at the end of the Voyage, and when free from his Command. For when the truth cannot otherwise be sifted out, then unable persons may be heard. And that no impediment in affairs may arise from the calumnies of vexatious persons under colour of Law, It has been provided, that not only the common Caution, *Judicio sisti & Judicatum solvi*, be kept on the part of the Defender; but also that the Pursuer or Prosecutor shall find Caution *de expensis sol-*

Vide
Statut.
Angl.

solvendis, if he fail in his proof. And if the party prosecuted be refractory and stiff, and will not appear in his own defence and of his Ship, or things challenged after three or four Citations, directed from the High Court of Admiralty called *quatuor defalta*, (that Citation called *tuum pro omnibus* not being sufficient to convince one of Contumacy and Contempt) especially in the claim of a Ship, or any part thereof, or any such like Goods; Then the Judge may order his Marshal or Officer, by his Sentence called *primum decretum*, to put the Plaintiff in possession thereof, at least to the worth of the Suit. Provided nevertheless that If the party appear within a year and a day after offering the Expence made to the Prosecutor, and caution to obey the Definition, he shall yet be heard upon the Propriety. Nor is it necessary to execute the Summons and Citation elsewhere, but where the Ship or Goods in question be.

C H A P. VI.

AS persons sailing in Ships are of divers orders, so they are diversly stiled. He who has the charge of all the Ship and Skippage is called by us the Master of the Ship; as by the *Romans Navicularius*, and *Magister Navis*; by the *Dutch* Skipper, by the *Grecians Nauarchus* or *Nanclerus*. But in a Ship of War the principal person is called Captain. The next person to the Master is he that guides and directs the Ship in her Voyage: And he with the *French*, Pilot; by us and the *Dutch*, Steers-man; by the *Romans*, *Gubernator*; * *Vide* *Leges Navales Rhodior.* * by the *Italians*, *Nochiero*, *Pilotto* and *Navarchus*. The third, the Masters Mate or Companion, chiefly if the Master be Steers-man; by the *Grecians* and *Romans* stiled *Proreta*. His charge is to command all before the Mast. The fourth person is he who attends upon the mending of the faulty parts in the Ship,

Ship, called by us and the *Dutch* Timberman or Shipwright. By the *Grecians* and *Romans*, *Naupegus* or *Naupagus*, but by the late *Grecians*, *Calaphates*. The next is the Boats-man, who has the charge of the Ship's Boat: With the *Grecians* and *Romans*, *Carabita*; *Carabus* denoting the Boat of a Ship. The next requisite in a Ship of great Burthen is a Clerk, with the *Italians* called *Scrivano*, who is to take account of all things received or delivered in the Ship; with all the needful expences made upon Ship and Shippage: Who for the faithfuller discharge of his Duty, ought to be sworn before the ordinary Sea Judge, as is practised in *Ancona* and other parts of *Italy*. The seventh is the Cook. The eighth is the Ship-boy, called by the *Grecians* *Nauphylakes*, by the *Romans* *Distarius*, by the *Italians* *Guardiano*. Now as all these are distinct in Office and Name, so they should be distinguished in their hires and wages, after the Custom of the Country. The rest of the persons belonging to the Skippage are promiscuously called *Mriners*; with

Ferretus
de Ret.
Jure Nava-
lii.

with the *Romans Nautæ*: But those of the baser degree, as Boys and Prentices in Ships *Mesonautæ*.

C H A P. VII.

NO Ship shou'd be freighted without a Charter-party written and subscribed, containing both the Master and Merchant, and the Name of the Ship to prevent any doubt that may arise; and that the Master shall find a sufficient Steersman, Timberman, Shipman, and Mariners convenient; Shipyacht, Masts, Sails, Tewes, strong Anchors and Boat fit for the Ship, with Fire, Water and Salt, at his own expence. And this Charter-party, among the Western Merchants and those of the great Ocean, usually is made to perform all things requisite by the Laws of *Oleron*. And if there be no Writing, but an Earnest, then the Merchant, if he falls off, loseth his Earnest. But if the Skipper recedes from the Bar-

C

gain

gain, he loseth double Earnest. If the Ship be not ready to sail at the day appointed in the Charter-party, the Merchant may not only free himself of her, except he take no notice of it to discharge her (for then by his silence he appears to consent again) but may obtain all Charges and Interest, except the Master produce some extraordinary necessity, that may be proved unavoidable: and then he loseth only his freight, because he has not deserved it. But if the Merchant be faulty, he shall pay the Skipper and Ship's damage; or, according to the *Rhodian Law*, shall entertain the Kippage and Company ten days: And if then he stays longer, shall pay the freight of all accordingly.

But if the Ship in her Voyage become unable, without the Master's fault, or that the Master or Ship be arrested by some Magistrate in her way, the Master may either mend his Ship, or freight another: But in case the Merchant agree not thereunto, then the Master shall at least obtain his freight, so far as he hath deserved it.

For otherwise, except the Merchant

con-

consent, or necessity oblige the Skipper to put the Goods in another Ship worse than his own, the Master is lyable to answer all losses and damage; except both the Ships perish that Voyage, and no fault or fraud be found in the Master. It is esteemed a fault for the Master to put to Sea either without a Skilful Pilot, or sufficient Furniture and Necessaries, according to the usual clause of Charter-parties; or if the other Ship which the Goods are put in is not sufficient, or if the Master hazard the Ship to Sea in an undue time. It was forbidden by the Emperors, *Gratian*, *Theodosius* and *Valentinian*, to put to Sea from *November* till *April*; and by the Kings of *Scotland* from *St Jude's Day* till *Candlemas*; and it was always accounted a fault for the Master to make out of a Port in time of a manifest Storm. And if a Skipper set forth his Ship for a certain charge, and then takes in any more, he ought to lose his Freight justly. And in such case, if there is a necessity that Goods are cast overboard, they shall not be made good by any Contribution, but at

the Skippers expence only. And if a Ship Port at any other Port than she was freighted to, against the Masters will, as by Storm or some force ; then the Goods shall be transported to the Port conditioned , at the Skipper's charge. But this must be tryed by the Oath of the Skipper, and two of his Mariners, or else he may be in further danger. Where it is to be observed, that the putting in at several Ports by the way does not imply a Diversity of Voyages. But if any man compel the Skipper to over-burthen his Ship or Boat, he may be prosecuted as a Criminal, and repair the damage arising from it. And if any Skipper let his Ship to any unfree man, and of no substance, and other qualities prescribed by King *James* the Third, he and his Mariners shall be lyable to the pains therein contained. If a Merchant put in more Goods in a Ship than was conditioned, then the Skipper may take what freight he pleases. It is imputed for a fault to the Master, if he directs his Course through dangerous ways, either for Pyrats, or Enemies, or other mis-

misfortunes, and damage happen thereby, So if the Master incurs any loss by carrying a Flag of any other Nation than his own. For as Packets, Pipes, Hogheads, and such like, should be marked with the proper Marks of the Merchants to whom they belong; so should Ships be discerned one from the other by their own Flags. The Master is no less faulty if he delivers Coffers, Pipes, Packets, &c. open, which he received close and sealed.

CHAP. VIII.

AS the Master of the Ship has the whole power and charge of the Ship committed to him, so it is prescribed, partly by the Owner or Out-trader, and partly by the Common Law of the Sea; as, to set her forth for freight, to take in Passengers, to mend and furnish the Ship, and to do this if there be a necessity for it, in a strange Country to borrow Money, with advice of the

* Oleron. Kippage or Company *, upon some of the Tackle, or to sell some of the Merchants Goods, provided that the highest price that the rest of the Goods is sold for at the Market be repayed to the Merchant. Which being done, the freight of those Goods so sold and repaid, shall be repayed by the Master to the Owner of the Ship, as well as the freight of the rest of the Merchant's Goods, except the Ship perish in her Voyage. In which case only the price that the sold Goods were bought for shall be render'd, and for no other cause.

As for the Master's duty, he ought first, before he looses or makes Sail, to ask and obtain the consent of most part of the Kippage; and if he is not a man of very good experience himself, he ought not to do any other thing of any consequence without their advice, on pain of answering whatever damage comes from such doings; and especially if he sets forth out of any Harbour without an expert Pilot; or if the Ship fall over in the Harbour. Thus as the Skipper's Rashness and want of Skill is to be corrected, so his Negligence and Sloth

Sloth is to be punished. He is to take care that the Overlays and Cowbridge be not unticked, nor the Pump faulty, nor a sufficient Decking wanting ;

* That the Corn, Victuals, and such like, be fenced well from Water and Spoyling. Otherwise he is lyable to the damage : Unless the Ship was open in the beginning, and freighted without any over-lap. Which kinds of Ships are called *Emphractæ* and *Rephractæ*.

* Leges
Naval.
Rhod. art.
11.

This Duty further is required of the Master, that according to the Act made by King *James* the Third of *Scotland*, He give up the Names of all persons to be transported in his Ship before he makes sail. And at his return a just Inventory of the Goods of any Person which shall happen to dye during the Voyage ; and that not only to preserve entire, the right of their Relations to them by a just Succession, but that also the Goods of Strangers may be kept safe and forthcoming for three years space, but by the custom of *England* one year, until the nearest Relation of the Deceas'd come and claim them ; tho with this

Liberty, that in the mean time the Bedding and Appurtenances may be used by the Master and his Mate, and what Cloaths the deceas'd had on at the time of his Death, may be deliver'd to the Boatswain and Servants of the Ship, as being therefore oblig'd to Bury him in the Sea.

C H A P. IX.

BUT besides this there is a duty incumbent on the Master, towards the Merchant and Passenger. He is oblig'd to return whatever Goods he receives within his Ship to him or them that deliver'd them; and those Goods are esteem'd deliver'd that are either actually put in the Ship, or are in the presence of the Master or Clerk as his Deputy laid to the Ship side; the same obligation extends to Boatsmen and Ferriers, tho it is safer and prevents disputes to deliver them with Witness, to the Master or his Clerk, or Skipper,
by

by him deputed for that purpose. The Master not being answerable for any thing put in his Ship without his or his Company's knowledge; because when Men are found ignorant of matter of fact, they are always suppos'd to consent. But if the Merchant or Passenger keep his Goods, &c. in his own possession, and suffer any loss, then the Oath of the Skipper and his Kippage is sufficient. But if afterwards it appears they were guilty, they shall repay double the loss, and be punish'd also for Perjury. So likewise the Master is held answerable for any damage sustain'd through bad Hooks, Blocks or Lines, if they were shewn him beforehand by the Mariner to be faulty. And in those cases always the Mariner is equally obliged with the Skipper.

Further, whatever loss or damage happens to Passengers Goods by unreasonable stowing or breaking up, is to be not only repaired by the Master, but also he shall lose his freight: And in *Scotland* twenty pounds to the King, and for want of proof in this case the Skipper and Kippage are obliged to take
their

their Oath. The Skipper is further ly-
able to such damages as come through
Negligence or Chance, that might have
been prevented, or by Passengers or
others than himself and his Kippage.
And if such damage happen by a Ma-
riner, the Skipper shall refund double,
tho he may recover it from the Mari-
ner. But he is free from any forfeiture,
if he forewarns every one to keep his
Goods to himself, and they consent
to it.

These Conditions will appear very
justly imposed upon the Master, if we
consider he ought to hire good Men,
and none but such in his Company: It
being in his power to choose his Com-
pany. Nor ought he to be ignorant
of the persons he has to deal with; for
were these obligations removed, it
would give great encouragement and
occasion of stealth.

Now if through the Master's fault
the Goods shou'd be Confiscated, as for
non-payment of the Custom, or false
Bills of the Goods Customable, or for
transporting unlawful Goods, the Ma-
ster shall refund the same with Interest.

But

But yet if the Master offer the just Custom, Anchorage, or whatever other Duty belongs to any Officers; and upon their unjust refusal, makes sail, the Weather and his necessity so requiring, in that case he may be legally defended at his return against the Officers of the Custom. Nor is it required that a Ship, that hath once paid her Anchorage, shou'd pay again, if driven by stress of Weather back into the same Port.

C H A P. X.

THe Masters Duty extends yet farther, and that to the Mariner. For since he has the ordinary Rule over his own Kippage or Company, he is to keep them in peace as long as they are under his command: And if any Mariner receives hurt either from his Service or his Companion, the Master must take care to see him healed, as the only person answerable for all actions

actions within Shipboard ; and then to use his authority in the recovery of the Charges from the other Mariner, and all the loss suffered by the party so hurt ; unless the latter has been the Aggressor.

And if a Mariner falls sick, the Skipper shall provide him with all things necessary and usual in the Ship, but shall not stay the Ship till his Recovery. And upon it shall give him his hire ; or if he dye, to his Wife, or nearest Relations. * But if his hurt was not got in the Ship's service, the Skipper must hire another in his place ; and if he draw more hire, then that Mariner shall refund the overplus. * And further, the Master ought to lend his Mariners if they lack.

P. L. ult.
L. Rhod.

*Oleron.

Again, If the Ships Boat shou'd perish with any Mariners in it, through the Masters fault, in not providing good Tewes, then the Master shall pay one whole years hire to the Heirs of such as are drowned. Further, he ought to give the Mariners Flesh upon *Sundays, Tuesdays and Thursdays* ; and upon other days Fish or such like, with
suf.

sufficient Drink : But no Meat to them that sleep not in the Ship: But yet both the Quality and Quantity of Mariners food and hire differ according to the different Customs of Countries, and the Conditions made at the entry of their Voyage.

C H A P. XI.

Touching the Duties and Priviledges of Mariners ; as they owe all due obedience to the Master, so they are to endeavour to avoid, or suffer his wrath ; yet after one blow given they may defend themselves. Now in case of Rebellion against the Master, as it is reputed such, when they lift the Towel three times before any one of them, and yet he will not submit himself, then he may be not only commanded on shore at the first Land ; but if openly strives, lose half his hire, and all the Goods he hath on Shipboard *.

* Oleron.

And

* Den-
mark.

* Oleron.

And if in this Contest a Mariner useth any Armour or Weapons, then are the rest to bind him, imprison him, and present him to Justice ; and in case any of them refuse so to do, he shall lose his hire, with whatever he hath on Shipboard. Further, if any Number of Mariners shou'd combine to force the Skipper to steer the Ship to any other Port than to what she was freighted, that then they shall be prosecuted as Criminals, and suffer Capital punishment *. But yet, If a Rebellious Mariner repent in time, and offer some attonement and amends for his simple Rebellion, and the Skipper shou'd, maugre all his endeavours, obstinately refuse him ; such Mariner may follow the Ship, and be entitled to, and obtain his Pay *.

Every Mariner is obliged to help his fellow on the Sea ; or upon his refusal loseth his hire ; and the Oath of the other Mariners shall be proof against him.

Mariners in a strange Port are not to leave the Ship without licence from the Master, or fastning her with four
Tewes,

Tewes, otherwise they must stand to the loss; and are to wait at the Ship till she be discharged and ballasted new, * and the Tackle taken down.

* Den-
mark.
Oleron.

If a Mariner, at the time of loosing and lading, labour not with the rest, but absents himself, and lyes idle, he shall pay a Fine, *pro re ratâ*, at the Master's discretion.

Half the Kippage, at least in a strange Port or Road, ought to stay on board, and the rest that go ashore, tho with licence, are to keep themselves sober, and refrain from suspected places, or else be lyable to an equal punishment with such as absent themselves when the Ship is ready to sail *. Or if he * Den-
mark.
reports himself greater than he really is mark,
in his calling, he shall lose his hire, half to the Admiral, and the other half to the Master. This ought to be more particularly in force against a bad Pilot. The Mariner also forfeits his hire, if the Ship break, and he contribute not as much as lyes in his power to save the Goods †. And if any ill should † Oleron.
happen to the Master, the Mariners are then obliged without delay to bring the

the Ship from whence she was freighted,
 * Eodem. unless it be otherwise provided *.

A Mariner may carry as much Meat
 forth of the Ship as he can eat at a
 † Eodem. Meal, but no Drink †.

A Mariner may keep his Portage in
 his own hand, or put it forth for
 freight, and yet the Ship is not to stay
 † Eodem. for the preparation of his Portage †.
 So that if the Ship be fully laden before
 the Goods for his Portage be brought
 in, he shall have the just freight of so
 much Goods.

If a Ship pass further than the Mari-
 ner was hired, his hire is accordingly
 to be augmented. If a Mariner be hired
 for a simple Mariner, and afterwards in
 the Voyage has an opportunity to be
 advanced to a Pilot or Master, he may
 pass, with Provision to render his former
 † Oleron. hire; and so in case of Marriage †.

Mariners are not only obliged to
 loose, and deliver Goods overboard,
 but also if there be no Porters nor Car-
 riers in those parts, to carry them
 themselves, for such hire as other
 Workmen,

If it happen that the Ship shou'd be Prized or Confiscated, yet the Mariners are to receive their Wages; and if she prosper, to have their Pay in the same Money that the freight is pay'd with.

Lastly, A Mariner shou'd neither be arrested, nor taken out of a Ship making to sayl, for any Debt, but only his hire, and such other Goods as he hath in the Ship arrested, according to the quantity of the Debt, and the Master to be answerable for all *. A Ship * Oleron. being likewise a mans House, which by Denmark. the Civil Law is his sure receptacle and refuge, unless for a Sworn Debt, or a Penalty to the Queen, through some Crime.

C H A P. XII.

IN Ships of great bulk and burthen, as a Clerk is very necessary, and his Office of great moment, so he is put in by men of chief power, and sworn so-

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lemnly

lemnly before some Judge, or at least before Owners and Mariners, that he shall justly execute his Office; that he shall write nothing but the Truth, and omit nothing. Nor may either Merchant or Mariner receive in, or carry out any thing of the Ship without his knowledge. So that no Goods cast away by Storm, or stoln or spoyled, that hath not been shewn to the Clerk, shall either be contributed to, to be restored, or be search'd and enquired after. And if they come safe to Land, the Skipper may take what freight he pleases, and the Clerk may apply as much as he pleases of that which is delivered to him to the wants of the Ship, but must satisfie the Owner thereof, being always accountable for his Receipts: But however he manages it, he is not to take in or give out any Goods by night, but in the day †.

†Vid. Statuta Ang.

CHAP.

C H A P. XIII.

IF a Pilot or Steersman be hired not only to guide the Ship thro dangers, at a time only, but for a whole Voyage, and he fail to be ready at the time constituted, he shall not only pay the Master and Merchants damage, but also the freight that is lost thereby, except in case of sickness, or some very reasonable and lawful Excuse. A Steersman after he has brought the Ship safe to Harbour, is no further obliged, it being then the Masters Office to take care of her Bed and Lying, and bear the rest of the Burthen, Charge and Danger. So that if the Ship, before she come into some safe Port or Harbour, perish, or Goods are lost or spoiled, the Pilot is accountable for them. And if he be so ignorant, that thro his Default the Ship or Company foresee a manifest Wreck, they may lead him to the Hatchles

† O'eron. and strike his Head off †. Or if the Mariners, without any impending Danger, perceive his Skill to fall short of what he professed it, then shall he both lose his Hire, and double it to the Admiral and Master; or else pass three times under the Ship's Keel †.

† Denmark.

C H A P. XIV.

THere is a very great difference in the loan of Money by Land and that by Sea, The Money lent to Sea, from the Importance of the Words, which are *Pecunia trajectitia*, supposes the hazard of the Lender. So that if any Accident happen in the Voyage, as that the Ships perish, or all be spoiled, the Lender suffers the Damage. But Money lent on Land, is without any Provision or Exception at the Peril of the Borrower, and therefore the Profit arising from such Money, is the value and price of the simple Loan only, which

is *Usura*. But the other is *Usura Maritima*, or *Fœnus Nauticum*, which is not the price of the Loan, but of the Hazard the Lender runs during the Loan, which is a certain time agreed on. And in case the Money miscarry either before the Voyage, or after the term appointed, then the Borrower is accountable to the Lender. Or if the Borrower lay out the Money in unlawful Goods, or defraud the due Customs, and therefore suffers a Confiscation of them, he frees the Lender from any obligation on his part, and renders himself only lyable. But on the other hand, Money lent to Sea without Hazard, and with security, shall pay no profit. And if Money is borrowed to supply the Necessities of the Company in the Ship, and before the time appointed for a repayment, a Wreck or Spoil happen, then the Loss is common to all, and must be repaired by Contribution. But if the time for Payment were elapsed, then the Borrower is to repay it without Contribution. And in case the Borrower detain the Money beyond the term constituted for the return of it, he shall not only re-

pay the Profit agreed on before the Voyage, but also in proportion to the length of the time elapsed.

C H A P. XV.

NOW the Master of a Ship is not only lyable to a Prosecution from the Party contracting with him, or obtaining any other Action or Claim against him, but also is as obnoxious to the Out-Trader, Furnisher, Hirer or Owner, as those who constitute the Master, and are to make good the Masters actions *. The Out-trader is he to whom the Commodity of the Ship redounds, and may lay his Action on any of them. *Ne in plures adversarios distrabatur qui cum uno tantum contraxit.* But the rest of the Owners or Out-traders shall relieve this man *pro rata* of their portions, except the handling of the Ship be severally divided amongst them, or that the Master obtains not a

* Parag.
Exercitor.
just. de Ob.
ex quasi
delic. T. T.
Naut. caus.

power and commission promiscuously over all : or if the Master has obliged himself beyond his Commission. As when he takes up Money to mend the Ship, when it needs not ; or that he hath no Commission at all. In such case the Lender is to be cautious, or else must blame his own conduct only. It being the first Politick in dealing, to know well the persons we are to bargain with. And yet if it appears that the Ship is in want of mending, and Money is lent for that purpose, but otherwise applyed by the Master, the Out-trader must satisfy the Creditor. But above all, Money lent for Provisions to the Ships Company ought justly to be repaid, as preferable to all other Debts. But if a Merchant contract a bargain with a Mariner only, the Out-trader is free, and under no obligation to the Creditor, unless for some fault committed by the Mariner, and that more especially if he was hired and put in by the Out-trader ; and tho by the Common Law of the Seas the Out-traders may not prosecute any person obliged to the Skipper, yet they have liberty to sue upon the Ma-

ster's Contract, as if they were Contractors Principal, because in such sort of Dealings he represents and sustains the Out-trader's person. But yet the Master is not answerable to the Out-trader on all accounts; as thus particularly, when the Passenger is non-solvent, the Master is not oblig'd to pay for him: It not being proper for him, upon the receipt of his Passengers, to dive into their circumstances and ability. Nor on the other hand, is the Out-trader held answerable for the Master's negligence, but for his own only.

CH A P. XVI.

AS there are Partners in Ships, so often divisions amongst them; and if any refuses to remain still as Partner, he cannot be obliged by Law, tho he had bargained not to separate. But in this case there are some restrictions;

ons; as when a Ship is newly bought or built for their purpose, it is absolutely necessary that she be employ'd one Voyage at the common expence and hazard of the Partners, before they may separate and be off: And then whoever wou'd be free shou'd rate his part, as he will hold or sell: and if he does not, and yet refuses to trade with the rest, then they may rig the Ship forth at their own charges, and the hazard of the party so refusing, so far as his part extends, without any account to him, or part of profit at her return †. But they are obliged to bring her home safe, or the value of his part. † Den- mark.

But if the persons, who obtain the greatest part of the Ship, refuse to remain as Partners, but are resolved to fall off; and if it so happen, that he who has the lesser part is not substantial enough to purchase their parts, nor can sell his own without great loss, then are they all bound to appraise the whole Ship. And if for want of a Purchaser the lesser Partner cannot avoid the Oppression of the greater, then may the Judge

Judge Ordinary examine into the debate, and determine *as in omnibus aliis bonæ fidei actionibus*, that every man may have his right.

C H A P. XVII.

Contribution, or Scot and Lot, in some cases on the Sea is as ordinary and common, as just and necessary: As when by the overburthen of Goods the Ship is pressed and in danger, and the Lives of those within it at stake, unless the overplus be cast overboard. The Master consults the Mariners; and if they refuse to consent, and yet the Danger and Storm continue, then nevertheless the Master may cast some Goods†, and they are obliged to a Contribution. But if the Merchant be present, he is then to cast first, and next the Mariners; and if these keep back any part, that shou'd be thrown over, to his own use, he shall restore double.

† Oleron.

But then when they come to Land, the Master and his company must take Oath that they threw Goods overboard for no other cause, than the safety of the Ship, Goods and Lives †, and when Goods are cast over they shall be repaired by Contribution of Ship, and such † Oleron. Goods as are preserved; and not only of Goods paying freight and of Burthen, but of Cloathing, Money, Jewels, &c. which are not weighty; and if Goods transported above the Overlap, or forbidden to be transported, are the cause of Danger to the Ship, and therefore are cast over, the Master is answerable for the Loss, and may be prosecuted as a Criminal. But if Goods unadvisedly, without the consent of the Owner, be cast forth on a sudden, the Owner may rate his Goods at their full value, the Company having by their rashness lost the priviledge to estimate them: As also if Goods be cast, that were put into the Ship without the knowledge of Master or Clerk, they shall be excluded the Contribution.

C H A P. XVIII.

IF a Ship or Goods are redeemed from Pyrates, the Contribution must be general; the Redemption tending to a general safety. But if it happen that a Pyrate has possessed himself of all, and yet detains but some particular Goods, and those not as satisfaction for the rest, then it appearing that the remainder is not safe by the loss of the others, but by an act of Generosity in the Pyrate, there shall be no Contribution raised for such Goods.

C H A P.

C H A P. XIX.

IF by the Losing of Goods cast, or any other accident, the remaining Goods received damage and spoyl, a Contribution shall be made proportionable to the damage so received.

C H A P. XX..

IF it be necessary to lighten a Ship of her Burthen, for her easier entring into any Port or Channel, two parts of the loss fall upon the Goods, and a third upon the Ship: Except the Ship surpass in worth the Loading; or that the charge of the Goods be not the cause of her inability to enter, but some bad quality proceeding from the Ship it self;

† Oleron.

self †; or unless it be so provided in the Charter-party that the Goods shall be fully delivered at such a Port. And this Condition is Law. In which case it is to be observed, that if the Goods which are put in the Boat or Lighter perish by Lightning, the Ship and remaining Goods in Ship shall repair the damage. But on the contrary, if the Ship and remaining Goods perish after the Lighter is once safe, no Contribution shall be set on the Goods in the Lighter. Because it is a constant Rule, that only such Goods shoud be lyable to Contribution when Ship and Goods come safe to Port.

There shoud also be a Contribution for the Pilots fee, that is taken in, to guide her into an unknown Port; and to raise the Ship off Ground, when the fault is not in the Master. So if two Ships rush against one another, and the Company swear their Innocency, and that it lay not in their power to hinder it, Contribution must be made for both their Losses. But if one of them perish, it cannot be, because no due proportion of the Loss can be made. This inconvenience

venience too wou'd arise, that at any time a Malicious Skipper might set an old weak Ship against a stronger, in hopes to recover a Contribution, and perhaps surmounting the loss. Yet if a Ship be thus lost, the Owner has this means of redress, that he may lay an Action against the Master or Mariner that loosed her, or cut her Cable. Which Action is called *Legis Aquilia*, for damage done. So if such a chance happen in the day time, from a Ship sailing against another riding at Anchor, then the Master of such sailing Ship shall answer the damage of the other to the extremity; and so in the night, if the Ship riding hold out a Light, or crying out to forewarn the other.

If some sort of Goods, as Salt or Corn, be laid promiscuously, without distinction, by several Partners in a Ship, and that the Master delivers out to any of them his due measure, and it so happen that before he can deliver the remaining dues to the rest, the said Corn or Salt wash or loose, he that has the good fortune to be served first enjoys it fully, with-

without any Contribution to the rest, because when these Goods were put in the Ship, they were delivered to the Master *tanquam in creditum*, and so he becomes owner, as of Money lent, which none is obliged to render in the self same pieces, but in value, or such like Coyn, except it was conditioned otherwise, which in all things is Law. Nor is it a fault in the Master, he lying under an inevitable necessity, if he delivers it at all, to deliver it to some one of them first.

C H A P. XXI.

AS to the manner of the afore said Contributions; Goods cast or spoyle are to be repaired to the price they cost, if the damage happen'd before Mid Voyage. But if after Mid Voyage, then to be proportioned to the Price the rest of those Goods bear at the Market

Market. There being here a consideration rather of Loss than Gain.

Now as to the persons whose Losses are under Contribution, they are to deal first with the Master, to retain all the same Goods in the bottom of the Ship in his keeping, till the Rate be set and executed; or else may omit all other persons, and prosecute the Skipper *ex conducto*; which ceases if the cast Goods are found again.

The Master's Priviledge does not only consist in the detaining and keeping of Goods brought within his Ship as pledges for the freight, but also for due and timely satisfaction of such Contributions; because the imposed taxation and freight also is thought to chiefly touch the said Goods, and therefore the Master may detain them till satisfaction be made; tho commonly the with-holding of other mens Goods is not allowed.

C H A P. XXII.

SHIPS or Boats in the service of the Country or the Prince obtain great Prerogatives: They go free from all Imposts, Customes and Arrestments, not only at their going out, but at their return, according to *Frederick* the Emperor's Constitution. Yet if a Skipper, serving Prince or Country, wilfully falls on Coasts and By-Courses, where he shou'd not, to their hurt, he merits Death: And the Commander or Officers that wittingly suffer it incur a forfeiture of all their Goods. Or if any man force the Skipper of these, or any other Ships, to take in more than his just charge, he shall not only be answerable to the full for all hurt and loss, but also be publickly punished †. And as these are the Priviledges and Conditions of Ships immediately serving the Prince, so all sorts of Ships are obliged

† Art. 49.
II. Selectar
Naval.

obliged to this service upon Command †, and if they refuse, the Ships are confiscate, unless they produce a testimony from the Admiral of some very lawful and substantial excuse *. And further, It is observable, that Masters of Ships or Ferriers once so professed, are bound to serve the Subject in common as well as the Prince ; excepting such as have left the Trade, or are under Safe Conduct, or have taken in more than they can well carry.

† Vide
Tit. de
Navib.
non Excu-
sand. C.

* De Offic.
Admir.
Ang.

And this is a common and uninterrupted Priviledge to all sorts of loaded and burthened Ships, to take the nearest place to the shore to discharge and unload ; and for that end, the Ships are lightned to give them place : and the persons who build, purchase or dress Ships expressly for a common encrease of Wealth to their Country, are reputed as priviledged.

C H A P. XXIII.

* 138A&-
or. Jacob.
1.

IF Strangers incur Shipwrack in *Scotland*, they are to receive the same favour of us as we from them in the like case *. That there shall be no Confiscation used against them, unless they use it against us, or are Pyrates or Enemies to Christianity. Otherwise whoever deprives such Shipwrackt persons of their Goods, shall, if prosecuted within a year and a day, repay fourfold to the Owner, and as much to the Prince or his Admiral. By the Emperor *Antonius* his Order the Robber of such Goods shou'd be Battooned and banished for three years, if he be of honest descent; but if mean and ignoble, then to be sent scourged to the Gallies or Metal Mines.

If any man shou'd prove so inhumane and barbarous as to hinder any assistance to the shipwarcked men in danger, he is

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to be reputed a Murderer ; and therefore none may hinder Ships from casting of Tews or Anchors on Land * : * *Gaius* as was decided between *Couper* and *Seagy* †. So is he equally criminal that holds forth a Lanthorn to decoy Ships to dangerous places, instead of a good Port or Harbour, or safe Road. And tho no damage shou'd accrue to the Ship or Company, yet the Admiral may punish him as he thinks fit. For this reason are Fishers in the night forbid to fish with Lights, lest it shou'd deceive Saylor's with a false shew of an Harbour. But the better to prevent such mischiefs, it was ordained by *Hadrian* the Emperor, that such as had any possessions on the Sea Coasts shou'd look very diligently to such chances ; upon pain of answering all things that shou'd be so lost by Robbery. Now if no claim was laid in due time to such a Wreck, formerly it belonged to the Prince his Customers, but now to the Admiral by the Prince's Grant.

l. 5. de
Rer. Divif.
† *Tom. 1.*
Regist.
Scot.

Again, If the Ship in a Wreck only perish, and the Goods saved, then the fifth or tenth penny, according to the

ease or difficult preserving of the Goods, shall be paid out of the Goods so preserved. But if the Skipper carry in the Ship to a Port, or part where he shou'd not, nor the Merchant wou'd not; then the Merchant is free, and the Skipper lyable to the loss, and answerable for the Ship then broken.

C H A P. XXIV.

NOW of things found within the Sea or Sea flood, there are three sorts: The first, found on the Stream floating, are called † *Floatson*; the second, found at the bottom of the Sea, or drawn up, *Lagon*: The third, cast on Land, but within the Sea flood, *Jetson*. Now, touching *Floatson* and *Jetson*, some think such Goods shou'd be proclaim'd as at Land, and forthcoming to the Owner and Proprietor thereof; and upon the non-appearance of such Owner, then the Party finding, comes

†Faber &
alii; Inst.
de Rer.

Divis.
Sect. Pen.

to be the Proprietor. And if he be rich, others think he shou'd give such foundlings to the Church or Poor. But now it is otherwise, the Prince, or person obtaining a Superiority or Sovereignty on the Sea-coast, where such Goods are found, claiming them as his right, which before was allowed to the finder. So if any Ship or Boat was found on the Sea or Sea Coast, without any person in it, and not claimed in a year and a day, then one half went to the finder, the other to the Prince. But since the constitution of Admirals, they are differently parted. In *France* the King claims one third, the Admiral another, and the finder another. In *England*, between the finder and the Admiral †: And if the finder conceals such † Vide de Goods, or any part of them, he not Offi. Adm. only loseth his just part, but may be Ang. fined at the pleasure of the Admiral.

If Whales, or other great Fish, or Ships or Boats, without any person in them, be driven by Winds or Waves, to any Coast or Land, then the whole belongs to the Admiral only.

C H A P. XXV.

ANd as to Goods taken upon the Sea, either from Pyrates, or open Enemies, or such as are not professed so, and yet allow rapine against us: Which kind is covered with the specious title of Letters of Marque, called *Jus Represaliarum*. Goods taken from Pyrates, as they were wrongfully taken from others, are just Prize to the Captor, if account be made to the Admiral, tho such Goods shou'd be found not actually in the Pyrate's possession that took it, but his Successors. But if the Captor meets with the Goods of his Countryman or Friend, he is then obliged to let them be forthcoming to the Owner, upon the rendring him just satisfaction for his loss, charges and hazard. So that if a man redeem his Neighbour's Ship from a Pyrate or Enemy, he is to receive the price thereof of the Owner.

But

But if no claim be laid to Goods taken from a Pyrate, the same are to be delivered to the Admiral, who is to consider the Captor in his due part.

If any Ship or Goods be taken by an Enemy, and it happen that before it be brought *in præsidia vel locum tutum*, for the making of a Right, it should be retaken by any friend, the Owner, claiming such Ship or Goods, shall have them. *Hujusmodi enim Res non tam captæ quam receptæ intelliguntur.* But when such Goods are a lawful Prize to the Captor, then is the Admiral to have a tenth part, and the remnant to be divided among the Captors. And so the Ship that sets no sail, nor runs no hazard with the rest, is not entitled to the Spoil. Provided always that such Prize, together with the Prisoners, be delivered in due time to the Captain, to be disposed of by the Admiral. So that if any person disposes of any such Goods before, he is liable to be punished, and the Receiver or Buyer imprisoned, till he give security that they shall be forthcoming to the Admiral and just Owner, according to the decision between the
King

King of Scotland and Mowbray, anno
 * Tom. I. 1487. 17 Junii *.
 C. 24. Re-
 gift. Scot.

And if two Foreign Nations are at War, and the Subjects of one takes a Ship from the other, within the bounds of a Neutral Country, friend alike to both, then may the Admiral of such Neutral Country set the Ship and its Crew at liberty, and restore her to her Owner, as if brought back to her own Port and Country. It being to the reputation of Princes to have their Country an *Asylum* to all Distressed Foreigners but Pyrates.

As concerning Letters of Marque, or *Jus Represaliarum*, or Goods taken under this Title upon Sea, shou'd not be looked upon as Prize ; but we shou'd deal in that case so as not to punish a Son for the Father's fault ; but that a difference shou'd be observed between the Innocent and the Guilty. Which was the cause of Constitutions made by Emperors of suppressing Reprizals in certain respects.

But in case we complain of such Reprizals, and the Princes to whom we make such Remonstrances are to be moved

moved with no Intercessions, but continue tacitly to wage War with us ; we may declare against him : He having in effect done it against us.

And therefore Letters of Marque have been allowable both by the Laws of *England*, and the old custom of *Scotland*, according to the tenure of the Act of Parliament made by *James* the First of *Scotland*, concerning Shipwrack, to be followed for a Rule in all such cases, that other Nations shou'd receive the same favour from us as we from them.

Now what Goods are taken by Reprizals shall be brought and presented before the Admirals, that a just Inventory may be taken of them.

C H A P.

C H A P. XXVI.

AS Fishing is common in its Privileges with Hunting and Hawking, so it is different from them in its Fishing in other Mens Ponds and Lakes, as is unlawful, being compatible with Theft: And that also in Rivers now adays, and parts of the Sea near the Possessions of some men that have a Grant from the King to hinder it.

As Fishing is the most conducive to the flourishing state of a Kingdom, so it has been preferred before all other Trades by all wise Princes, who have took peculiar pains to encourage and advance it, by Ordinances to build Ships and Boats for that purpose, and by allotting certain times only, upon pain of Fine, for Fishing, as that of Salmon; and not only upon pain of Fines, but also of Forfeitures and Death, according to the manner of the Offence, and

Con-

Contempt of their Decrees and Statutes.

* The Prohibitions are such as forbid the making or setting and using of Crowes, Dams, Fosses, Parkings, Dyking and Herry Waters, in any Waters where the Sea ebbs and flows, under pain of Confiscation of all the Goods of the Transgressors in *Scotland* *, &c.

* Vide Statuta & Conflit. & Act. Regum Fran. Angl. & Scot.

* Jac. 6. Parl. 6. Cap. 69.

As to their Priviledges. All Ships sailing into the parts where Herring are taken, during the taking thereof shall let down Sail after Day-light, drop their Anchor, and watch with Lanthorn and Light till day appear, lest they shou'd damage the Fishers either in their Boats or Nets. In *Denmark* the pain is Death to the transgressors † : And the Fishers are forbidden to use Light in their Fishing by night, lest they deceive the Saylors with a false shew of a Port, or damage one another; with other provisions; and also concerning the length and breadth of their Nets *.

† Denmark.

* Vide Stat. Ang.

In the North of *Scotland* it is agreed by the Seafarers, that no Ground-draff nor Drag-net be set before *March*, nor upon deeper Water than fourteen fathom. That

That none shall equivocate when asked about the length and depth of his Tewe, when he is in driving, nor to suffer his Tewes to flit and run over one another, under pain of ten pounds for every such transgression.

That from Sun-set on *Sunday* no man lay nor hale his Nets or great Lines, or exercise any labour, under the same pain. And the better to encourage Fishers in the West and North of *Scotland*, there is a Statute, forbidding any Custome but the Queen's to be exacted from the Fishers, under pain due to manifest oppressors against them that exact it. And again, such Captors of Fish are ordered to bring such Fish taken near the Coast of *Scotland*, first to the Market-place, near which they themselves dwell, and then, after the refusal is made there, they may remove them to another; but in case they do not obey, then two thirds of such Fish to be confiscated to the Queen, and the other to the Magistrate.

As to the Barrelling of Fish, they are to follow the old measures. Each Barrel of Herring, or of white Fish, to be
of

of twelve Gallons. A Barrel of Salmon fourteen Gallons. And therefore Hoop Irons to be made in each Town, for the Tryal and Gauging thereof †.

† Vide
Statut.
Angl.

C H A P. XXVII.

AS to Ships of War, having already touched upon their Priviledges before, as they are the Queen's Ships, I shall come to speak of the Captains and Commanders of such Ships, in reference to their Duties, Power and Preferment.

And first, they should be Men, Good as well as Heroick, Vigilant and Careful, and therefore very temperate at Sea ; their Employment being as full of Hazard and Danger, as their Opportunities sudden and momentary. And therefore their Power by Sea far surmounts that of Officers at Land, and consequently the greater their Honour, from so great Charge, Care and Hazard.

'Tis

'Tis their Duty to choose men free from heinous and immoral Lives, that they keep them from Idleness, and punish such as are Rebellious or Irreverent to take they care have Food convenient to hear their mutual Complaints, to keep them in Peace and Obedience, and the like. As to the Duties of Captains to their Prince or Admiral, and their Priviledges, are gathered, and prevail from old Customs †.

† Vide L.
Admir.de
Franc.

C H A P. XXVIII.

Ferryers and Watermen are obliged to serve all Men in common for their due Wages, and upon denial may be compell'd, such Denyal giving cause of Action; and if they transgress a third time, they are lyable to be suspended from their Trade, except they can produce just and lawful Cause †. So, for more convenient Landing of Men or Beasts, they are required to have convenient Bridges ready, or else to

† Jac. 3.
Parl. 13.
c. 95.

lose

lose their Boats. And are no less bound than Skippers and Masters of Ships to render again whatever they receive to be carried in their Boats.

It is unnecessary to take notice here of their ordinary Fares and Hires. It being at length in the Statutes of *England* and *Scotland*: And further, because their Fraughts, according to the rate of times are often changed and altered.

C H A P. XXIX.

Lastly, we are to consider the Instrumental Causes of all Sea-faring, viz. Shipwrights, and builders of Boats and Ships, call'd by the *Græcians* and *Romans*, in imitation of them *Naupegi*, and therefore subject to the Jurisdiction of the Admiralty, as being accountable to the Admiral or his Judges for their diligence and dutiful discharge of their Office, in reference to the goodness of

their work, or else they are lyable to the pain of the Law, call'd *Lex Aquilia*, to answer whatever loss happens by their unskilfulness or negligence. And therefore they should take care that their materials be good, and if such Furniture is not their own, but must have it of another, they must be cautious of taking up with bad. Nor are they to put green Timber in their work, but ought to see, if they can, their Wood cut either at the Wan of the Moon, or in the middle of the Winter, that it may be solid and durable; for Timber cut at improper times is full of moisture, and when dryed, is apt to open and receive Water: Likewise they are to be as nice in the choice of their Iron. As to their Fees, it often happening before the Work that is done they cavil about them; they ought to bargain before the Admirals, Deputy or Judge, and such Contract to be registred in their Books. If a Shipwright contract with the Commissioners to build a Vessel in such an appointed time, and he exceed the time limited, he is lyable to any Pain or Forfeiture the Commissioners shall

shall think fit, unless he produce some
inevitable cause of his Non-performance,
as either bad Weather, which renders
him incapable of working; or that he
proved his diligence, and that the short-
ness of the time was not sufficient for the
Work contracted for.

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